IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.105 OF 2001

Mohamood Balabhai Pathan ...Appellant
vs.
Dattatraya Dagadu Thorat and Ors. ...Respondents

Mr.G.S.Godbole for the Appellant
Mr.S.D.Thokade for Respondent No.2.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 22,2007.

P.C.:

1. Heard learned Advocate for the Appellant. Though this Appeal is numbered as First Appeal, in view of the decision of a Division Bench of this court, the same will be governed by constraints of Second Appeal under section 100 of the Code of Civil Procedure,1908 and the Appeal will lie only on substantial questions of law.

2. The dispute involved in this Appeal is whether the property claimed by the Respondent Nos.1 to 3 was a grave-yard and was reserved for Mohammedan Community and whether it is a trust property.

3. After having heard the submissions of the learned Advocate for the Appellant, I find that no substantial question of law arises in this Appeal. My attention has been invited to the order dated 30th November 1989 passed by the Joint Charity Commissioner, Pune Region, Pune in a Revision Application. By the said order, earlier order dated 22nd September 1953 passed

by the Assistant Charity Commissioner, Solapur was set aside and the proceedings was remanded to Deputy Charity Commissioner, Solapur for holding an enquiry as regards the said property.

4. The Joint Charity Commissioner, Pune directed that the Deputy Charity Commissioner will give an opportunity to both the parties to lead the evidence.

5. The finding recorded in the impugned order by the learned Additional Sessions Judge is that an opportunity was available to the Appellant to lead the evidence but he has not availed of the said opportunity. He has noted in the order that a direction was issued by the Deputy Charity Commissioner on 25th April 1990 to produce the documents. However, no document was produced by the Appellant to show that the said property was reserved for the Muslim community. On the basis of the Application made by the Respondent Nos.1 to 3, the case was adjourned to 14th May 1990. On that day, the Appellant and his Advocate remained absent. Thus, the Appellant failed to lead evidence after the order of remand and that is the reason why it has been held that the Appellant has failed to establish that the property in dispute was a grave-yard. No substantial question of law arises.

6. There is no merit in the Appeal and the same is dismissed

with no order as to costs.

JUDGE